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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,453	02/18/2004	Eric Jason Stelnicki	1027-2DIV	1761
7590	08/03/2004		EXAMINER	
Christopher & Weisberg, P.A. Suite 2040 200 East Las Olas Boulevard Fort Lauderdale, FL 33301			LUU, TUYET PHUONG PHAM	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 08/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/781,453	STELNICKI, ERIC JASON
	Examiner	Art Unit
	Teri P. Luu	3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _____ MONTH(S) FROM
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 03 May 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1,9,10,17-19 and 21-35 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1,17,21,29 and 33 is/are rejected.
 7) Claim(s) 9,10,18,19,22-28,30-32,34 and 35 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>2/18/04</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 17, 21, 29 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,367,459 to Corely.

Corely discloses an apparatus comprising a headgear and at least one support pad being removably attachable to the headgear wherein the at least one support pad is positionable between the head of the infant and a sleeping surface.

The recitation “for controllably positioning and supporting a head of an infant while lying down” is a statement of intended use. A recitation directed to the manner in which a claimed apparatus is intended to be used does not distinguish the claimed apparatus from the prior art - if the prior art has the capability to so perform (see MPEP 2114 and *Ex parte Masham*, 2 USPQ2d 1647 (1987). In the instant case, the headgear of Corley positions and supports the head of the infant (e.g., the side of the head) while lying down.

As concerns claim 21, the support pad is contained within a pocket affixed to the headgear, see. Fig. 3.

As concerns claim 29, Corley discloses a method of using a headgear to controllably position and support a head of an infant while lying down, the method comprising selecting at least one support pad, the at least one support pad being positionable between the head of the

infant and a sleeping surface; attaching the selected at least one support pad to the headgear; and positioning the infant to place the support pad between the head of the infant (e.g., the side of the head) and the surface.

As concerns claim 33, Corley further discloses that the step of attaching the selected at least one support pad to the headgear includes inserting the selected at least one support pad into a pocket on the headgear.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,581,832 to Bridley in view of U.S. Patent No. 2,367,459 to Corley.

Bridley discloses an infant positioning system comprising an infant support device (10) configured for receiving the infant. Bridley fails to disclose the system also having a headgear configured to fit about the head of the infant. Corley discloses a headgear configured to fit about the head of a user. The headgear is capable of dispersing a pressure a sleeping surface places on the head of the user. Bridley discloses that the headgear is used "to shut out or to deaden objectionable sounds that would normally interfere with such person's falling asleep or with sound sleep thereafter." Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the infant with the headgear of Bridley, so as to shut

out or deaden objectionable sounds that would normally interfere with the infant's falling asleep or with sound sleep thereafter.

Allowable Subject Matter

Claims 9, 10, 18, 19, 23-28, 30-32, 34 and 35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:
Bridley, as modified by Corley, teaches an infant positioning system comprising an infant support device and a headgear having at least one support pad. The support pad is positioned in the ear region of the headgear so as to shut out or deaden objectionable sounds. However, Bridley, as modified, fails to teach, in addition to the at least one support pad, a rear support pad positionable at the back of the infant's head. Numerous references cited disclose headgears having at least one support pad positionable about the back of the infant's head. Since the purpose of the headgear is to deaden or shut out objectionable sounds, neither Bridley nor Corley provides a reason or motivation for providing the headgear with at least one rear support pad positionable at the back of the infant's head.

The prior art of record also fails to teach the at least one support pad arranged to be stackable with at least one other support pad for aligning the infant's head and body.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Teri Pham Luu** whose telephone number is **(703) 305-7421**. The examiner can be best reached Monday-Friday from 6:30 am to 2:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Heather Shackelford**, can be reached at **(703) 308-2978**.

Submission of your response by facsimile transmission is encouraged. Technology Center 3600's facsimile number for all official papers is **(703) 872-9306**. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase a patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's hands and will eliminate Post Office processing and delivery time as well as the PTO's mail room processing and delivery time. For a complete list of correspondence not permitted by facsimile transmission, see MPEP § 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check should not be submitted by facsimile transmission separately from the check.

Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP § 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office (Fax No. _____) on _____

(Typed or printed name of person signing this certificate)

(Signature)

If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP § 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark

Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be directed to **heather.shackelford@uspto.gov**.

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed expressed waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Teri Pham Luu
Primary Examiner